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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/761,636	01/18/2001	Marc G. Achen	1064/48505	6112

7590 05/10/2005
CROWELL & MORING LLP
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EXAMINER

HUYNH, PHUONG N

ART UNIT PAPER NUMBER

1644

DATE MAILED: 05/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/761,636

Applicant(s)

ACHEN ET AL.

Examiner

Phuong Huynh

Art Unit

1644

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 14 March 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 14 April 2005. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: None.
Claim(s) objected to: 50, 54 and 55.
Claim(s) rejected: 1-3, 12, 18, 23, 24, 26, 49, 51-53, 63 and 72-88.
Claim(s) withdrawn from consideration: 4, 14-17, 25, 56-62 and 89-103.

AFFIDAVIT OR OTHER EVIDENCE


8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☒ Other: See Continuation Sheet.

Continuation of 3. NOTE: The proposed amendment to claim 1(b) and (c) "loop fragment having a sequence" raises the new issues that would require further consideration and search because the term "having" is open-ended. It expands the loop fragment to include additional amino acids at either or both ends of the loop fragment of SEQ ID NO: 5, 6, 7, 10, 11, 12, 13 and 14 in addition to one or more conservative amino acid substitutions, or one or two amino acids deleted or inserted. Further, the proposed amendment to claim 53 raises the issue of 112 second paragraph because "The cyclic peptide according to claim 1" is repeated twice. In addition, it is not clear to one of ordinary skill in the art that the cyclic peptide in claim 53 is intended to be close or open since the term "comprising" is deleted. All rejections remain.

Continuation of 13. Other: In respond to applicant's argument that it is improper for the Office Action mailed 10/14/04 to be made final, the new ground of rejections are necessitated by the amendment filed 6/25/04 because amendment to claim 1 "A monomeric monocyclic peptide...a core sequence which consists of (a) a receptor binding loop 1, 2 or 3 of VEGF-D ... the corresponding loop fragment mimics a native conformation in the corresponding region of VEGF, VEGF-C" raises the issue of new matter. Page 30, lines 10-14 of the specification states that the monomeric monocyclic peptides created "mimic the conformation of each of the native loops 1, 2 or 3 of VEGF-D". The specification does not disclose the monomeric monocyclic peptides mimic the conformation of each of the native loops 1, 2 or 3 of VEGF or the native loops 1, 2 or 3 of VEGF-C.


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